

RESOLUTION NO. 08-06

INTRODUCED BY:

Councilperson Clark
Councilperson Dooley

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING AN AGREEMENT WITH THE TECHNOLOGY GUIDE, LLC,
APPROPRIATING CERTAIN FUNDS THEREFOR AND AUTHORIZING THE
MAYOR TO SIGN A WARRANT IN PAYMENT THEREOF.**

WHEREAS, pursuant to Section 31-15-302(1)(a)-(b), C.R.S., the governing body of a municipality has the authority to control the finances and property of the corporation and to appropriate money for municipal purposes only and provide for payment of debts and expenses of the municipality; and

WHEREAS, the City Council wishes to hereby approve a professional services agreement with The Technology Guide, LLC and finds that such approval promotes the public health and welfare; and

WHEREAS, the City has received services and value from The Technology Guide, LLC and The Technology Guide, LLC has invoiced the City on April 10, 2008 and May 4, 2008 in the amount of \$7,326.88; and

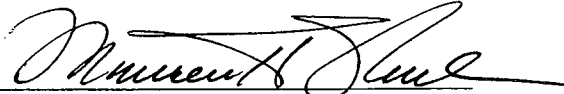
WHEREAS, the City Council wishes to hereby appropriate funds for and authorize the Mayor to sign a warrant in payment of said amount.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

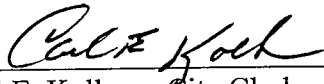
Section 1. The City Council hereby approves the Agreement for Professional Services with The Technology Guide, LLC substantially in the form attached hereto as Exhibit A and authorizes the Mayor to execute said agreement on behalf of the City.

Section 2. The City Council hereby appropriates money for the payment of The Technology Guide, LLC for services rendered and described in invoices dated April 10, 2008 and May 4, 2008 in the amount of \$7,326.88 and authorizes the Mayor to sign a warrant in payment thereof.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 20th day of May, 2008.

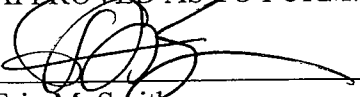

Maureen A. Shul, Mayor

ATTEST:



Carl E. Kollmar, City Clerk

APPROVED AS TO FORM:



Erin M. Smith
City Attorney

Exhibit A

Agreement for Professional Services with The Technology Guide, LLC

AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF CASTLE PINES NORTH
AND
THE TECHNOLOGY GUIDE, LLC

THIS AGREEMENT FOR PROFESSIONAL SERVICES, made and entered into effective the 12th day of February, 2008, by and between the **CITY OF CASTLE PINES NORTH**, State of Colorado (the "City"), and **THE TECHNOLOGY GUIDE, LLC**, a Colorado limited liability company authorized to do business in Colorado (the "Consultant")(individually referred to as "Party" or together referred to as the "Parties").

RECITALS

WHEREAS, the City is undertaking certain activities for information technology services; and

WHEREAS, the City desires to engage the Consultant to render certain professional services and assistance in connection with such undertakings of the City; and

WHEREAS, the Consultant has the ability to assist the City through its professional expertise, knowledge, and experience and is ready, willing and able to provide such services, subject to the conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties agree as follows.

1. LINE OF AUTHORITY: Maureen A. Shul, Mayor, (the "Authorized Representative"), is designated as Authorized Representative of the City for the purpose of administering, coordinating and approving the work performed by the Consultant under this Agreement.

2. SCOPE OF SERVICES: All services described in Exhibit A, attached hereto and incorporated herein, shall be performed by Consultant.

The City may, from time to time, request changes to the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon between the City and Consultant, shall be in writing and shall become part of this Agreement upon execution.

The Consultant agrees to diligently and professionally perform all the services described herein in a manner satisfactory to the Authorized Representative. It is also understood and agreed that the Consultant shall not, in performing services hereunder, undertake any action or

activity prohibited by the terms of any lease, permit, license or other agreement in effect during the term hereof between the Consultant and the City for the use and occupancy by the Consultant of any City facilities or space of which the City has notified Consultant in writing of such leases, permits, and/or policies.

3. COMPENSATION: Subject to the maximum contract liability and all other provisions of this Agreement, the City agrees to pay to the Consultant, and the Consultant agrees to accept payment as described in Exhibit B, attached hereto and incorporated herein, during the term hereof, in accordance with the terms set forth herein.

4. MAXIMUM CONTRACT LIABILITY: Any other provisions of this Agreement notwithstanding, in no event shall the City be liable for payment under this Agreement for any amount in excess of Twenty-Five Thousand Dollars (\$25,000.00). The City is not under obligation to make any future apportionment or allocation to this Agreement.

5. TERM: It is mutually agreed by the Parties that the term of this Agreement shall commence as of 12:01 a.m. on February 12, 2008, and terminate at 12:00 a.m. on December 31, 2008. This Agreement, at the option of the City, may be renewed for up to two (2) successive one (1) year terms, if notice is given to the Consultant by the City on or before December 15 of the current term. This Agreement and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the City's satisfaction with all products and services received during the preceding term.

6. INVOICING PROCEDURES: Payments shall be made to the Consultant based upon invoices submitted by the Consultant, provided such invoices have been approved by the Authorized Representative. Payments will be made to the Consultant within thirty (30) days, or within a period mutually agreed upon by the Parties in writing, after City has received complete invoices from the Consultant. The City reserves the right to require such additional documentation, including monthly activity reports detailing the Consultant's activities and services rendered, as the City deems appropriate to support the payments to the Consultant. The signature of an officer of the Consultant shall appear on all invoices certifying that the invoice has been examined and found to be correct. Payments past due greater than thirty days are subject to a ten percent (10%) annual financing charge or a minimum ten dollar (\$10.00) finance charge, which ever is larger.

7. CONFLICT OF INTEREST: The Consultant agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Consultant further agrees not to hire, pay, or contract for services of any official, officer or employee of the City. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of City.

8. INDEMNIFICATION: The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever for any purpose whatsoever. The Consultant shall defend, indemnify and

hold harmless the City, its commissioners, officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including workers' compensation claims, in any way resulting from or arising from this agreement; provided, however, that the Consultant need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's commissioners, officials, officers, directors, agents, and employees.

9. LIMITATION OF LIABILITY AND DATA COMPLETENESS CLAUSES:

City understands and confirms that the Consultant will be using and relying on data, material and information furnished to it by the City and its representatives and that Consultant shall not have any responsibility for the accuracy or completeness of any such information, whether or not it makes an independent verification.

City hereby represents, warrants and covenants to Consultant that all such information will not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements therein not misleading. Consultant makes no warranty, expressed or implied, that the data or conclusions presented by the Consultant are complete or accurate since the Consultant is relying on information presented to it by the City.

City further represents, covenants and warrants that all of the programs and software that it uses are properly licensed and have not been pirated or duplicated, and defending against such claims of illegal use of software is solely the City's responsibility and not the Consultant's.

10. INDEPENDENT CONTRACTOR: The Consultant is an independent contractor. Notwithstanding any provision of this Agreement, all personnel assigned by the Consultant to perform work under this Agreement shall be and remain at all times, employees of the Consultant for all purposes. **THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS THROUGH THE CITY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.**

11. ILLEGAL ALIENS: The Consultant shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant affirms that he has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the Basic Pilot Employment Verification Program administered by the United States Department of Homeland Security that Consultant does not employ illegal aliens. In the event the Consultant is not accepted into the Basic Pilot Program prior to entering into this Agreement, unless the Basic Pilot Program is discontinued by the federal government, Consultant shall apply to the participate in the Basic Pilot Program every three months until the contractor is accepted or this Agreement has been completed, whichever is earlier. Consultant is prohibited from using the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall be required to:

- (A) Notify the subcontractor and the City within three days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; AND
- (B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant is required under this Agreement to comply with any reasonable request by the Department of Labor and Employment ("Department") made in the course of an investigation the Department is undertaking pursuant to its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by the City. Consultant shall be liable to City for actual and consequential damages to the City resulting from such breach pursuant to §8-17.5-101(3) C.R.S. City shall also report any such breach to the Office of the Secretary of State.

Consultant acknowledges that the Department may investigate whether Consultant is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section.

12. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The Parties hereto understand and agree that the City, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City.

13. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part without the prior written approval of the Authorized Representative. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Consultant hereunder.

14. CITY REVIEW OF RECORDS: The Consultant agrees that, upon request of the Authorized Representative, at any time during the term of this Agreement, or three years

thereafter, it will make full disclosure to the City and make available for inspection and audit upon request by the Authorized Representative, the City Director of Finance, or any of their authorized representatives, all of its records associated with work performed under this Agreement for the purpose of making an audit, examination or excerpts. The Consultant shall maintain such records until the expiration of three (3) years following the end of the term of this Agreement.

15. PROPRIETARY AND CONFIDENTIAL INFORMATION: Each Party understands that Consultant's work pursuant to this Agreement will involve access to Proprietary and Confidential Information of City and that Consultant may disclose Proprietary and Confidential Information to City. Proprietary and Confidential Information means confidential, proprietary or trade secret information and materials of either Party, its affiliates and any third party to whom such Party owes a duty of confidentiality, in whatever form, tangible or intangible, whenever disclosed to the other Party. During the term of this Agreement and thereafter, each Party will:

- (A) Hold the other Party's Proprietary and Confidential Information in trust and confidence;
- (B) Use the other Party's Proprietary and Confidential information only for its and its affiliates' benefit (and not for any third party's benefit or in any way detrimental to such Party or any of its affiliates);
- (C) Not reproduce such Proprietary and Confidential Information; and
- (D) Not disclose, publish or otherwise make available to any third party, directly or indirectly, any Proprietary and Confidential Information, in each case without first obtaining the disclosing Party's written consent on a case-by-case basis, except as otherwise is necessary or appropriate for Consultant to perform the services. Each Party may disclose the other Party's Proprietary and Confidential Information only to its employees and agents who have a need to know such Proprietary and Confidential Information. Each Party shall be liable for any breach of this Agreement by its respective employees and agents. The obligations in this Section 15 do not apply to any Proprietary and Confidential Information to the extent a Party shows such Proprietary and Confidential Information
 - (i) Is or has become generally known or available other than by any act or omission by such Party;
 - (ii) Was rightfully known by such Party prior to the time of first disclosure to such Party;
 - (iii) Is independently developed by such Party without the use of the other Party's Proprietary and Confidential Information; or
 - (iv) Is rightfully obtained without restriction from a third party who has the right to make such disclosure and without breach of any duty of confidentiality to the non-disclosing Party.

- (E) Each Party may also disclose the other Party's Proprietary and Confidential Information to the extent it is legally compelled to do so, provided that it uses its best efforts to give the other Party advance notice of such disclosure and cooperates with the other Party to prevent or limit the scope of such disclosure.

16. INTELLECTUAL PROPERTY:

(A) **Definitions.** The following terms have the meaning set forth below:

- (i) **“Excluded Materials”** means any scripts or tools conceived, created or reduced to practice by Consultant at any time, including scripts or tools used by Consultant for computer support.
- (ii) **“Prior Inventions”** means any creations (including any technology, inventions, discoveries and works of authorship) that Consultant (alone or with others) conceived, created or reduced to practice prior to the Effective Date. Consultant represents and warrants that the following is a complete list of all Prior Inventions that it intends to Use in connection with performing the services under this Agreement, or that is or will be incorporated in any deliverable or other Work Product: Various programming tools, scripts and processes developed by Consultant to automate common computer setup, security and maintenance tasks including, but not exclusively, Microsoft software programming tools and Cisco programming tools. The design, functionality, programming code and layout of any websites developed for the City remain the product of Consultant and are licensed solely for use by the City. Any website content and text is the property of the City.
- (iii) **“Proprietary Rights”** means the right, title and interest worldwide in and to the Work Product (whether currently existing or conceived, created or developed later), including all copyrights, trademarks, trade secrets, patents, industrial rights and all other intellectual and proprietary rights throughout the world related to the Work Product. Proprietary Rights include all rights, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world, related to the Work Product, together with all national, foreign and state registrations, applications for registration and all renewals and extensions of them (including any continuations, divisionals, reissues, substitutions and reexaminations), all goodwill associated therewith and all benefits, privileges, causes of action and remedies relating to the foregoing, whether before or later accrued (including the exclusive rights to apply for and maintain all such registrations, renewals and extensions, to sue for all past, present and future infringements or other violations of any Proprietary Rights and to settle and retain proceeds from any such actions).
- (iv) **“Third Party Materials”** means any software, materials or technology that a third party owns or controls and which Consultant incorporates into or uses in connection with the Work Product. Consultant represents and warrants that the following is a complete list of all Third Party Materials that it intends to Use in connection with performing the services under this Agreement, or that is or will be incorporated in any deliverable or other Work Product: No Third Party Materials.

